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Corser v. County of Merced
E.D.Cal., 2006.

Only the Westlaw citation is currently available.

United States District Court, E.D. California.
David C. CORSER, Plaintiff,

v.

COUNTY OF MERCED; Gloria Cortez-Keene;
Demetrios Tatum; Merced County Sheriff's
employees Sheriff Mark Pazin, Undersheriff Bill
Blake, Commander Parrish, Deputy Zyskowski,
Deputy L. Miller, Volunteer Smallwood, (Badge #
V330); Merced County Public Works Director Paul
Fillebrown; Larry Gonzales; Maria Socorro Gonzales;
Ruth Stone; and Does 1 through 50, Defendants.

No. 1:05-CV-00985 OWW DLB.

Aug. 31, 2006.

David C. Corser, Planada, CA, pro se.
[Michael L. Mason](#), Mason, Robbins, Gnass &
Browning, Merced, CA, [Sharon B. Futerman](#), Hewitt
& Prout, Sacramento, CA, [Justus C. Spillner](#), [Graham
Christenson Mills](#), [Matthew Edward Fletcher](#),
McCormick, Barstow, Sheppard, Wayte & Carruth
LLP, Fresno, CA, for Defendants.

**ORDER DENYING PLAINTIFF DAVID C.
CORSER'S MOTION TO QUASH SUBPOENA
[OLIVER W. WANGER](#)**, District Judge.

I. INTRODUCTION

*1 Plaintiff David C. Corser ("Plaintiff") moves to
quash subpoenas issued by the court on July 17, 2006.
Defendant Maria Socorro Gonzales ("Defendant")
opposes the motion.

II. PROCEDURAL HISTORY

The complaint was filed on July 29, 2005. Doc. 1,
Compl. Defendant Larry Gonzales' motion to dismiss
the second, fifth, and seventh causes of action and
strike the fifth, Doc. 18, Mot. to Dismiss and Strike,
filed on September 30, 2005, was denied by order
entered January 10, 2006. Doc. 35, Order. Defendant
County of Merced answered on October 19, 2005.
Doc. 23, Answer. Defendant Maria Socorro Gonzales
("Defendant") answered on November 11, 2005. Doc.

31, Answer. Defendant Larry Gonzales answered on
November 18, 2005. Doc. 33, Answer. Plaintiff
moved on July 20, 2006, to quash subpoenas issued
by the court on July 17, 2006. Doc. 58, Mot. to
Quash. Defendant filed opposition on August 7,
2006.

III. BACKGROUND

Plaintiff moves to quash the July 17, 2006, subpoenas
issued to Mercy Urgent Care Life Time Health Care
("Mercy"), Olivewood Meadows Occupational
Health Center ("Olivewood"), Hansen-Richey
Radiology Group ("HRRG"), the California State
Compensation Fund ("the Fund"), and the California
Department of Industrial Relations-Workers
Compensation Division ("WCD"). The subpoenas
issued to Mercy, Olivewood, and HRRG commanded
those entities to:

produce and permit inspection and copying of the
following documents or objects ...:

Any and all documents and records pertaining to care,
treatment[,] and examination, including but not
limited to, all office, emergency room,
inpatient/out-patient charts, x-ray films, MRI films,
[and] [CT scans](#). Any and all records of payment
and/or discount regarding any medical billing as well
as the bills themselves, billing information, including
but not limited to statements, computer printouts, all
charges, credits, payments, adjustments [,] and/or
write-offs, and the sources of each, such as all EOBs
from any insurance carrier reflecting any and all
credits and adjustments and write-offs to the bills by
virtue of any payments and/or contractual
agreements/adjustments, including fees, etc.[,] for
professional services including Medicare, Medicaid,
etc.[,] pertaining to [Plaintiff][,]

Doc. 58, Mot. to Quash, Ex. A. The subpoena issued
to the Fund commanded it to: produce and permit
inspection and copying of the following documents
or objects ...:

Any and all non-privileged records and documents,
including but not limited to industrial injury records,
benefits entitled to or paid out, medical records and
information of health and/or accident claims
pertaining to [Plaintiff].

Id. The subpoena issued to the WCD commanded it
to: produce and permit inspection and copying of the

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following documents or objects ...:

Any and all records regarding commission awarded to [Plaintiff] ... from any and all dates.

Id.

IV.LEGAL STANDARD AND ANALYSIS

*2 Plaintiff moves to quash these subpoenas “for failure to follow the **procedures** outlined in [[California Civil Procedure Code Section 1985.3](#)].”: Attorneys for Defendant [] have requested documents which require specific [n]otice to [c]onsumers or [e]mployees. Defendant [] has failed to comply with the rules and procedures protecting the privacy of medical and other personal records. In particular, [Defendant] has failed to include proper notice as required in subdivision (e), sections 1 through 3, which should have included a basic statement of consumer/employee rights regarding the option to object to the release of protected documents.

Doc. 58, Mot. to Quash, 1-2.

A federal court follows federal procedural law. [Kohlrantz v. Oilmen Participation Corp.](#), 441 F.3d 827, 830 (9th Cir.2006). The Federal Rules of Civil Procedure apply irrespective of the source of subject-matter jurisdiction, and irrespective of whether the substantive law at issue is state or federal. [Vess v. Ciba-Geigy Corp.](#), 317 F.3d 1097, 1102 (9th Cir.2003). Discovery is a procedural matter governed by federal law. [Sibbach v. Wilson & Co., Inc.](#), 312 U.S. 1, 14 (1941); [Univ. of Texas at Austin v. Vratil](#), 96 F.3d 1337, 1340 n. 3 (10th Cir.1996); [Fagin v. Gilmartin](#), 432 F.3d 276, 285 n. 2 (3rd Cir.2005).

State law is of very little relevance to discovery in a federal action. Rule 69 provides that discovery in aid of execution may be had either in the manner provided in the federal rules or in the manner provided by the practice of the state in which the district court is held. State law may affect questions of privilege. But except for those two matters it is wholly settled that discovery in a federal court is governed only by these rules and that state discovery practices are irrelevant.

8 Wright, Miller & Marcus, Federal Practice & Procedure: Civil 2d § 2005 (1994 & Suppl.2006).

Plaintiff has not asserted any privilege. To the extent that [Section 1985.3](#) may provide a California-law privilege, however, the privilege does not apply to

this litigation. [Rule 26 of the Federal Rules of Civil Procedure](#) provides, in relevant part:

Parties may obtain discovery regarding any matter, *not privileged*, that is relevant to the claim or defense of any party[.]

[Rule 26, Fed.R.Civ.P. Rule 501 of the Federal Rules of Evidence](#) provides, in relevant part:Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

*3 [Rule 501, Fed.R.Evid.](#)

Here, the rule of decision is provided by [Title 42, Section 1983, of the United States Code](#). The scope of an evidentiary privilege in a [Section 1983](#) civil rights action is a question of federal law. [Green v. Baca](#), 226 F.R.D. 624, 643 (C.D.Cal.2005) (citing [Breed v. United States District Court](#), 542 F.2d 1114, 1115 (9th Cir.1976)); *see also* [Everitt v. Brezzel](#), 750 F.Supp. 1063, 1066 (D.Colo.1990) (“since this case involves civil rights claims arising under 42 U.S.C. § 1983 (1988), [the court] will look to federal common law to determine whether the materials are privileged”).

That there are state-law claims subject to the court's supplemental jurisdiction under [Title 28, Section 1367\(c\)\(3\), of the United States Code](#), does not alter this conclusion. “Where there are federal question claims and pendent state law claims present, the federal law of privilege applies.” [Agster v. Maricopa County](#), 422 F.3d 836, 839-40 (9th Cir.2005); *accord* [Hancock v. Hobbs](#), 967 F.2d 462, 467 (11th Cir.1992); [Hancock v. Dodson](#), 958 F.2d 1367, 1373 (6th Cir.1992); [von Bulow v. von Bulow](#), 811 F.2d 136, 141 (2nd Cir.1987), *cert. denied*, 481 U.S. 1015 (1987); [Thompson Co. v. General Nutrition Corp., Inc.](#), 671 F.2d 100, 104 (3rd Cir.1982); [Memorial Hospital for McHenry County v. Shadur](#), 664 F.2d 1058, 1061 n. 3 (7th Cir.1981); *see also* [Fed.R.Evid. 501](#) advisory committee's note (“[i]t is also intended that the Federal law of privileges

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should be applied with respect to pendent State law claims when they arise in a Federal question case”).

VI. CONCLUSION

For the foregoing reasons, Plaintiff's motion to quash is DENIED.

SO ORDERED

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